

STATE OF NEW JERSEY  
DEPARTMENT OF THE TREASURY  
DIVISION OF CONTRACT COMPLIANCE & EEO IN PUBLIC CONTRACTS

**Treasury – Affirmative Action Rules Re-adopted with Amendments**

The New Jersey Department of Treasury, Division of Contract Compliance and Equal Employment Opportunity in Public Contracts recently readopted N.J.A.C. 17:27, the rules governing affirmative action employment practices necessary for public agencies, contractors, subcontractors and business firms to comply with equal employment opportunity standards mandated by N.J.S.A. 10:5-36 et seq., (P.L. 1975, c. 127). Although the rules remain reasonable, necessary and proper for the purposes for which they were originally adopted, namely, to ensure equal employment opportunity for minorities and women on public contracts, the Division felt that numerous amendments were needed to further clarify and define standards that are necessary to implement the law. The amendments also reflect editorial, grammatical, organizational and technical changes. However, the amendments of particular interest to public agencies are the significant rearrangement of the rules into a more congruent format. Specifically, in an effort to accomplish the desired outcome, public agency requirements with respect to advertisements, bid specifications, contracts and employment goals have been brought together in subchapter 3 rather than spread in different areas throughout the rules. This rearrangement is expected to make the rules more reader friendly and better understood not only by public agencies but also the contractors and subcontractors to whom they award contracts.

The Division of Contract Compliance and EEO in Public Contracts expects that the amendments will have a positive social and economic impact as they will continue to remedy conditions of discrimination that have historically existed with respect to

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employment for minorities and women. This is especially true in the construction industry where the building trades, which represent high wage/high skill careers, are among the occupational areas that continue to show a disproportionately low number of minorities and women among the workforce. The proposed amendments are expected to increase the number of qualified minorities and women available to compete in high wage/high skill careers in the construction trades by leveling the playing field for women and minorities who want to access apprenticeship and employment in building trades and establishing ongoing programs that actively outreach and train women and minorities to work on any public works project. These training and outreach programs will assist in decreasing the number of unemployed persons and those in need of public assistance. The proposed amendments are also expected to benefit public agencies, contractors and subcontractors by decreasing the number of sanctions and penalties resulting from non-compliance. Finally, the amendments are expected to improve the Department's effectiveness and efficiency in providing a fair and equitable system for monitoring contracts funded with public funds. The following is a summary of the rules and amendments by subchapter.

Subchapter 1 states the Department's policy regarding affirmative action in the awarding of contracts funded by public agencies. The subchapter was amended to make clear that any reference to goods and services contracts includes contracts for professional services. This clarification has also been made elsewhere throughout the rules.

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Subchapter 2 defines the words and terms used throughout the rules. The subchapter has been to define public works contract as indicated in the statute. In addition, in this subchapter and throughout the rules, references to the word “female” have been changed to “woman” and references to “public agency compliance officer” have been changed to reflect “public agency compliance officer designated by a public agency” who has received delegated authority from the Division under subchapter 6.

Subchapter 3 contains the general requirements for public agencies that award contracts. Mandatory contract and goal compliance requirements previously codified in other subchapters have been moved to subchapter 3 for easy reference. In addition, although the section on designation of public agency officers remains in Subchapter 3, it has been moved from the end to the beginning of the subchapter. The requirements that a public agency must satisfy for a State-approved affirmative action construction program (i.e., delegation of authority to monitor its own construction projects) have also been moved and added to this subchapter at N.J.A.C. 17:27-3.9.

Subchapter 4 outlines affirmative action requirements for goods and services contractors and subcontractors. A new section at N.J.A.C. 17:27-4.5 has been added to exempt goods and services subcontractors located outside of the State of New Jersey from the requirements of the subchapter. Subcontractors within the State of New Jersey with four or fewer employees are also exempted from the requirements of the subchapter.

Subchapter 5 describes minority and women employment goal obligations for goods and services contractors and subcontractors. The rules pertaining to mandatory

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contract language for employment compliance have been moved from this subchapter to subchapter 3 at N.J.A.C. 17:27-3.5.

Subchapter 6 discusses the affirmative action plan requirements for construction contractors and subcontractors. It is noted that a contractor or subcontractor operating under an existing federally approved or sanctioned affirmative action program is exempted from the requirements of this chapter, provided that the contractor and subcontractor submit appropriate evidence of federal approval in accordance with N.J.A.C. 17:27-3.5 (c), has been moved to this section at N.J.A.C. 17:27-6.5 (g).

Subchapter 7 depicts minority and women employment goal obligations for construction contractors and subcontractors. Of particular note are the amendments to the rules concerning the financing of minority and women worker outreach and training programs has been recoded at N.J.A.C. 17:27-7.4 and amended. Specifically, the training rules have been amended to eliminate the requirement that the one-half of one percent training funds be used to train minorities and women for employment on the construction project that is the subject of the construction contract. These amendments reflect that the one-half of one percent may be used to train persons to work on projects that have been sanctioned or any other project. Additional amendments to the training rules delineate the requirements that must be fulfilled to obtain a waiver of the one-half of one percent training funds requirement or to have the training funds returned to the public agency. Additional amendments to this subchapter are found at N.J.A.C. 17:27-7.3 (b) which instructs contractors to obtain the employment goals from the Division's website or to request the employment goals from the Division. Also, the mandatory language for

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employment compliance has been moved from N.J.A.C. 17:27-7.4 to 3.9. Finally, the subchapter has been amended at N.J.A.C. 17:27-7.5 to clarify that the public agency distributes initial project workforce reports to the contractor and the Division distributes monthly project workforce reports (Form AA 202) to the contractor.

Subchapter 8 is reserved. As a result, no summary of its contents is necessary.

Subchapter 9 sets forth requirements related to the monitoring of public works contracts. Amendments to this subchapter clarify the Division's authority to conduct on site visits, to attend all project meetings, and to enter the construction project site and the contractor's, subcontractor's and public agency's business facility or facilities for the purpose of determining whether a contractor, subcontractor or public agency is complying with its affirmative action plan and the Division's rules.

Subchapter 10 sets forth compliance procedures and sanctions applicable to public works contracts. It further establishes the penalties that may be imposed on a non-complying public agency, contractor or subcontractor. The remedial actions or penalties established by statute at N.J.S.A. 10:5-31 et seq. have been added to the rules in this subchapter for clarifying purposes.

Subchapter 11 contains provisions regarding the furnishing of reports to the Department by public works contractors, subcontractors and public agencies. There were no substantive amendments made to this subchapter.

Subchapter 12 discusses training, referral and outreach programs for minorities and women. It also lists several examples of organizations that may assist public works

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contractors and subcontractors in the recruitment, referral and training of minorities and women. The amendments to this subchapter add additional organizations to this list.

The Division of Contract Compliance and EEO in Public Contract's Public Agency Unit is available to provide technical assistance to public agencies regarding their compliance requirements under the affirmative action rules. To schedule technical assistance or for more information contact the Division at (609) 292-5473.